FLATHEAD COUNTY BOARD OF ADJUSTMENT MINUTES OF THE MEETING OCTOBER 01, 2019

CALL TO ORDER 6:00 PM

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Tobias Liechti, Cal Dyck, and Roger Noble. Mark Mussman and Erin Appert represented the Flathead County Planning & Zoning Office.

There were 10 members of the public in attendance.

APPROVAL OF MINUTES 6:00 PM Klempel motioned, seconded by Netteberg, to approve the August 06, 2019 minutes as written.

The motion passed unanimously on a roll call vote.

PUBLIC COMMENT

(Public matters that are within the jurisdiction of the Board 2-3-103 M.C.A) 6:00 PM

None

DISCLOSURE OF CONFLICT OF INTERESTS 6:01 PM Netteberg disclosed that a law firm, representing the South Whitefish Neighborhood Association, had submitted comment regarding the upcoming file. One of the partners in that firm was a current client of his. He did not know if that would be a conflict of interest. The board did not believe it to be a conflict of interest and Dyck said their belief was that, due to the fact Netteberg was not going to benefit from FCU-19-07, they did not see that as a conflict of interest.

EAST GLACIER HOLDINGS LLC (FCU-19-07) 6:02 PM A request from Land Solutions, LLC, on behalf of East Glacier Holdings, LLC, for a conditional use permit for an Airfield to allow for commercial use of an existing helicopter landing pad that was permitted by FCU-18-04 on May 1, 2018. The property is located at 5560 Highway 93 South, near Whitefish, MT within the Blanchard Lake Zoning District, and is zoned *SAG-5/HO* (Suburban Agricultural/Highway Overlay). The property contains approximately 19.2 acres

STAFF REPORT 6:02 PM

Erin Appert reviewed the Staff Report FCU-19-07 for the board.

BOARD QUESTIONS 6:05 PM

None

APPLICANT PRESENTATION 6:06 PM

Dave DeGrandpre from Land Solutions, LLC, 36708 Leon Rd., represented the applicants. He reviewed the vicinity map, the site plan, and pictures that had been submitted to the board. He referred to a photo taken from Highway 93 to show that helicopter pad was over the hill and not visible from the highway. He said the helipad was about 500' from the highway. He also referenced a photo of the helipad itself to show the lighting. The helipad had been built in May 2018 after a permit had been gained. The lights were not obtrusive and really did not have an impact on the surrounding neighborhood. It had been in use and operation since last year. He noted that out of the 10 public comments received, none of the comments referenced the site that has already been in use this past year.

He also added that there was a lot of potential uses. He admitted that the application was vague in specifying the exact number of trips and the exact make up of uses (i.e. helicopters, drones for industry and personal use). He said that in doing research and talking with the applicant about potential uses for this site, he discovered a lot of applications that would be available such as forest fire monitoring, forestry, wildlife and habitat surveys, anti-poaching type trips. These could all be done with small aircraft drones. It could be really helpful to the community. There could also be search and rescue and law enforcement type operations along with land surveying or mapping. There were several applications that would not have a large impact on the community and would, in fact, be an asset.

He said the applicant wanted to be a good neighbor. They were not looking to disrupt the neighborhood or have negative impact. He suggested that the board make conditions of approval to mitigate some of the concerns; things like hours of operation and placing a limitation on the flights per week. He asked that the board look at the fact that there were legitimate applications for something like this. It did not have to be a major impact on the community.

BOARD QUESTIONS 6:11 PM

None

PUBLIC COMMENT 6:12 PM

Cheryl Watkins, 143 Old Morris Trl., spoke in opposition of the application. She was concerned about the nearby wetlands and the negative impact it might have on the birds in that area. She said it deeply affected the physical and mental wellbeing of neighbors along with everything around; the wildlife, the horses, and personal property. She was concerned about drones. She had spoken to the FAA in Helena, the Jet Center at the airport, and the administrator of Glacier International Airport. The agencies referenced already had a landing pad and contracts [elsewhere] therefor would not use the subject helicopter pad. She pointed out that they did not mention the size of the helicopters and whether they would be used for private events or the impact they would have. There was concern for the safety of the helicopters crashing in to a house or highway as well as the distraction for people driving on the highway. She was concerned about the animals and negative impact it might have on them due to the noise. She felt it was a terrible infringement on individual property rights because it affected so many [people] and she was concerned property values decreasing. When she spoke to the Jet Center she had found out that they had places to rent and therefor posed the question of why wouldn't they take the business there? They would have to abide by the airport rules. She said the applicants wanted approval based on what they might do as opposed to what they would do.

Mike Medlin, 5600 Highway 93 S, spoke in opposition of the application. He said helicopters were the most dangerous type of aircraft, they were loud and intrusive, and often caused dust and rock throwing hazards. His front door and children's play yard was within 250' of this risk. He hadn't seen a helicopter land *every* day but was apprehensive to the negative impact [of a commercial operation]. He was concerned about the noxious smell and the direct threat to the wildlife. The neighbors had agreed to a personal landing pad and did not want to get in the way of personal property rights but felt that this use was unacceptable to his family. There were 3 FAA commercial landing sites between 5-8 miles away from this proposed site and were safe alternative. He felt the denial of this permit ensured a safe landing for commercial guests, protects the community, the highway, wildlife, and property values. The decision of denial would not get in the way of the property owner's private use of the landing pad. Medlin asked the owner take his business to the airport.

Doug Law, 449 Blanchard Lake Rd., spoke in opposition. He had 37 years' experience with the forest service in managing helicopters and firefighting. His concern, with all the training that he had, was the noise that helicopters generated. He mentioned that the flight pattern depended on the wind. If they did not have the right wind then they would have to go in a different direction. If it was ferrying people, which he referred to as "heavies", it required helicopters with much larger rotors. There were safety regulations on where they could fly and how high they had to fly, especially if they were carrying "heavies". They were not allowed to fly with "heavies" unless they were over

2,000' because of the safety concerns. As a property owner in the area, he did not want to see commercial. He felt that it smelled like "fish" because the [owner] supposedly used it for personal use to fly somewhere in to East Glacier, and nobody had ever heard of it. Now all of a sudden they wanted to go commercial.

Gene Grandkoski, 120 Old Morris Trail, spoke in opposition of the application. He had heard and seen many helicopters go over [his property] and said they were extremely loud. They were louder than the airplanes. He wanted some concrete information of existing take offs and landings from the private use so that they could have a better idea of what commercial use would be. He was concerned that his property would be within the flight path. He was also concerned about HWY 93 and the current traffic congestion and additional traffic it may cause.

Diane Stoner, 5610 HWY 93 S., spoke in opposition of the application. She had heard the Alert helicopter, along with another one, come in to the area. Her animals did not like it. They were loud. She could not imagine them coming in and out all weekend. She was concerned about the noise, her animals, and the wildlife in the area. She did not want to see a commercial and asked the board think about the close neighbors. She was also concerned over the decrease in property values.

Glenda Carr, 5620 Highway 93 S., spoke in opposition of the application. She felt there would be more opportunities for something disastrous to happen with the highway and animals nearby. She was also concerned about the property values. They had only heard the helicopters land once or twice but did not want to see it go commercial.

Heidi Brandt, 190 E Blanchard Lake Rd., spoke in opposition of the application. She owned a 50 acre cattle ranch nearby and voiced that she did not want commercial flights going across her property.

APPLICANT REBUTTAL 6:32 PM

DeGrandpre addressed a couple of the public comments which he felt were erroneous; like highway safety. He said the Department of Transportation had said that a new approach permit would not be required at this level of traffic increase. It would not be substantial enough to warrant that.

He did appreciate the concerns over things like noise and environmental impact in which he suggested they condition limiting the number of operation or the hours of operation. He suggested limiting the number of trips to something like 50 trips per week maximum, maybe only 5 days a week.

He said, in terms of flight patterns, that he was not an expert. From what he understood, pilots liked to fly at least 1,000', preferably 2,000', above population centers and neighborhoods to reduce noise and impacts. He felt that pilots would be detail oriented and cognizant of potential impacts; dust flying, snow flying, things along those lines. He referenced the picture of the pad and said that it needed to be kept in immaculate condition. He felt that some of the potential impacts were a little bit overblown but some were legitimate concerns and asked the board try to find common ground and put appropriate conditions on it.

BOARD DISCUSSION 6:34 PM

Netteberg questioned the vagueness of the application. It was not made clear to him what the commercial operation would be; would they be flying sightseeing helicopters, would it be a flight school, or what all it would entail? He struggled with the vagueness of it all. He asked if the helicopters would be small or large. Would they be carrying a few people or lots of people? What kind of helicopters would be coming in? He felt the applicants were asking for the moon and was baffled as to what exactly they were asking for.

Klempel agreed and said she had a hard time wrapping her head around that as well. It could turn in to something that isn't really even on the application. She asked how they could even police that, because they could not.

Noble said he was struggling with the same things as the other board members. He felt that it was too general and lacked specificity. He referenced Rosewater Subdivision, which also had a lot of objections to the noise impact. They had brought in a study showing the projected noise decibels which helped the neighbors realize that it was a non-issue. He question the lack of information including no records of any landings that had occurred since the time the application had been approved. He felt that information should have been presented so that the board could make some sort of judgement as to how much use it was getting and what the future use anticipated. It was so wide open; how many days, the operating hours, etc. He felt it wasn't their job to prepare and specify those things. He was struggling with the vagueness and felt the application in incomplete in that respect.

Liechti said he was struggling with the fact that commercial airports were in the general vicinity of this application and could offer the flexibility that this application had seemingly applied for. He said they could sit there all night to figure out how many flights they were ok with and specifics but that was a little

much for him. He was open to tabling this item and giving the applicants the opportunity to further define what exactly they were planning on doing.

Netteberg asked staff they could table it to give the applicant the opportunity to gather more information. Dyck said they could motion to table it or make a motion or motion to deny because of lack of information. Dyck was in favor of denying it due to lack of information because it was the responsibility of the applicant to bring the information so that they could make a decision that was worthy of the community. He felt that a lot of the concerns that were being raised could be addressed if given more information; the size of the helicopters coming in, safety and the noise. He felt those were concerns that needed to be seriously addressed. As to why not going to the commercial airport that was less than 5 miles away, talking about minutes, with a complex designed with large areas around so that it does not impact a residential area. This was being asked to be inside the residential areal and would impact the community. He said a conditional permit was grace given to an individual but not a specific right. He appreciated that [the board] had allowed him to have a personal use but there wasn't even enough data from that so that they could make a wise choice on how it was impacting the community before they allow something that was way too vague.

MOTION TO TABLE UNTIL FURTHER INFORMATION RECEIVED (FCU-19-07) 6:43 PM

Netteberg made a motion, seconded by Noble, to table FCU-19-07 application until further information received.

BOARD DISCUSSION 6:43 PM

None

ROLL CALL TO TABLE UNTIL FURTHER INFORMATION RECEIVED (FCU-19-07) 6:44 PM

Motion passed on a 3-2 vote. Klempel and Dyck dissented.

BOARD DISCUSSION 6:44 PM

The board addressed the room and notified them that it had passed to table the discussion until they receive more information. It will be tabled until then. The board discussed what information they were wanting. Netteberg said they needed information about the types of helicopters, size of helicopters, who the occupants will be and where they will be flying to. Noble said there needed to be some sort of an environmental assessment as well and that it needed to be carried a little further due to the potential concerns for the wildlife.

Mussman asked if they wanted to continue to a date certain or table it until certain information was received. They discussed this in detail and the applicant's representative requested that it be tabled until they had time to gather the said information. He thought it would be a good idea to re-notice the public. He was willing to pay for the cost but staff said that would not be necessary. They continued to discuss at length what information the board was seeking and wanted presented in order to continue the hearing. It was decided to table the application until the information is received, then depending on when the information is received, will depend on the hearing. The meeting will continue approximately 6 weeks after we receive said information. The notice of the hearing will be in the Daily Interlake as well as notifying the adjoining property owners within 150'.

OLD BUSINESS 6:54 PM

Mussman followed up from the last meeting that they had requested a template for appeal meetings. He provided one to the board from the county attorney. He reviewed that once the public had their comments, everyone was done.

NEW BUSINESS 6:57 PM

It was discussed that there were three board terms expiring in December 2019 and their letter was sent out on September 20, 2019.

The board discussed the issue of board conflict of interest and what was and was not considered a conflict.

ADJOURNMENT 6:59 PM

The meeting was adjourned at approximately 6:59 pm on a motion by Noble. The next meeting will be held at 6:00 pm on November 5, 2019.

Cal Dyck, Chairman

Angela Phillips, Recording Secretary